

Board of Forestry and Fire Protection

NOTICE OF PROPOSED ACTION

**“WHITE AND BLACK OAK WOODLAND MANAGEMENT SPECIAL
PRESCRIPTION”**

Title 14 of the California Code of Regulations (14 CCR):

Division 1.5, Chapter 4,

Subchapter 4, Article 3

Subchapter 5, Article 3

Amend: § 913.4 [933.4] Special Prescriptions.

[Notice Published April 29, 2016]

NATURE OF PROCEEDING

Notice is hereby given that the California State Board of Forestry and Fire Protection (Board) is proposing to take the action described in the Informative Digest.

PUBLIC HEARING

The Board will hold a public hearing on Wednesday, June 15, 2016, at its regularly scheduled meeting commencing at 9:00 a.m., at the Resources Building Auditorium, 1st Floor, 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements. Additionally, pursuant to **Government Code (GOV) § 11125.1(b)**, writings that are public records pursuant to **GOV § 11125.1(a)** and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M. on Monday, June 13, 2016.

The Board will consider only written comments received at the Board office by that time and those written comments received at the public hearing, including written comments submitted in connection with oral testimony at the public hearing. The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Matt Dias
Acting Executive Officer
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA 95814

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

publiccomments@BOF.ca.gov

AUTHORITY AND REFERENCE (pursuant to GOV § 11346.5(a)(2) and 1 CCR § 14) 14 CCR § 913.4(f), 933.4(f) Note: Authority cited: Sections 4551, 4553, 4561.2, Public Resources Code. Reference: 4512, 4561, 4561.2, 4551.5, 4582 and 4582.5, Public Resources Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW (pursuant to 11346.5(a)(3)(A)-(D))

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973 (FPA, PRC § 4511, et seq.), the Board is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands.

PRC § 4561.2 authorizes the Board to adopt alternative stocking standards that meet the purposes of PRC § 4561 if those alternative standards reasonably address the variables in forest characteristics, achieve suitable resource conservation, and contribute to specific forest health and ecological goals as defined by the board. PRC § 4551 requires the Board to adopt district forest practice rules to assure the continuous growing and harvesting of commercial forest trees and to protect the soil, air, fish, and wildlife... PRC § 4553 requires the Board to continuously review and revise the rules in consultation with other interests.

The purpose of the proposed action is to enable landowners, through a new special prescription applicable in the Coast and Northern Districts, to manage stands for Oregon white oak (*Quercus garryana*) and/or California black oak (*Quercus kelloggii*) in which Group A species are encroaching. Removal of encroaching conifers has been shown to be effective in maintaining and/or restoring oak tree health and associated plant communities in Oregon white oak and California black oak woodlands. There is strong landowner interest in conifer removal (across the diameter classes) in the north coast and northern districts.

The problem is the loss of oak woodlands to conifer encroachment, which is widely recognized as a major conservation concern, and it has been documented in a number of research and other publications. The increased occupancy of oak woodlands by Douglas-fir and other conifers has been reported throughout portions of California and the Pacific Northwest in multiple oak habitat types. Studies point to altered disturbance regimes, and the suppression of low-intensity fire in particular, as the primary cause of increased conifer establishment in oak woodlands.

Oak woodland habitat and the presence of oaks within forested landscapes are consistently identified in forest research as critically important for fulfilling wildlife needs and sustaining biodiversity in California. Oak woodland structures and ecological associations uniquely sustain or enhance wildlife populations and biodiversity, and are distinct from habitats within coniferous forests. Many oak species also represent economically and culturally important resources within the state, both currently and historically. The transition of oak habitat toward conifer dominance greatly affects these unique resources and values, and results in social, economic, and ecological losses.

A 2011 report by the North Coast Regional Land Trust on the status of oak woodlands in Humboldt County specifically identified the increasing abundance of Douglas-fir in oak woodlands as "...a primary factor driving the loss of oak woodlands in Humboldt County." Among the obstacles to enhancement or restoration of oak woodlands

identified in the Land Trust report are the minimum post-harvest stocking requirements of Forest Practice Rule Sections 912.7, [932.7, 952.7].

There is no comparable federal regulation or statute.

Board staff conducted an evaluation on whether or not the proposed action is inconsistent or incompatible with existing State regulations pursuant to **GOV § 11346.5(a)(3)(D)**. State regulations related to the proposed action were, in fact, relied upon in the development of the proposed action (including portions of §§ 895.1, 912.7 [932.7], 913.2 [933.2], 913.3 [933.3], 913.4 [933.4], 913.5 [933.5], 913.6 [933.6], 913.7 [933.7], 913.9 [933.9], 913.10 [933.10], 913.11 [933.11], 1071-1075 of Title 14 of the California Code of Regulations) to ensure the consistency and compatibility of the proposed action with existing State regulations. Otherwise, Board staff evaluated the balance of existing State regulations related to the system of forest practices applicable to timber management on state and private timberlands developed pursuant to the FPA and related to the Prevention and Control of Forest Fires and found no existing State regulations that met the same purpose as the proposed action. Based on this evaluation and effort, the Board has determined that the proposed regulations are neither inconsistent nor incompatible with existing State regulations. The proposed regulation is entirely consistent and compatible with existing Board rules; it amends them, providing for a new Special Prescription.

MANDATED BY FEDERAL LAW OR REGULATIONS

The proposed action is not mandated by federal law or regulations.

The proposed action neither conflicts with, nor duplicates Federal regulations.

There are no comparable Federal regulations related to the system of forest practice applicable to timber management on state and private timberlands developed pursuant to the FPA and regarding the existing system of regulation related to the Prevention and Control of Forest Fires. No existing Federal regulations that met the same purpose as the proposed action were identified.

OTHER STATUTORY REQUIREMENTS (pursuant to GOV § 11346.5(a)(4))

There are no other matters as are prescribed by statute applicable to the specific State agency or to any specific regulation or class of regulations.

LOCAL MANDATE (pursuant to GOV § 11346.5(a)(5)).

The proposed action does not impose a mandate on local agencies or school districts.

FISCAL IMPACT (pursuant to GOV § 11346.5(a)(6))

There is no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

Regarding costs or savings to any State agency, the anticipated fiscal impact of the proposed amendment to 14 CCR § 931.4 [933.4] is expected to be less than \$50,000.

These costs would result from additional time spent by the Department and reviewing agencies on the annual potential 10-50 additional THP submissions, THP amendments, or NTMP amendments made possible by this regulatory proposal. Initially there will likely be a minimal number of new THPs or amendments submitted in a year (2-10) due to the unfamiliarity with the new regulation. The fiscal impact of this proposal shows that projects completed under this proposed silvicultural regulation alone will often result in only a break-even or marginal economic gain. Therefore, this new regulation will likely often be used in conjunction with other existing more profitable silvicultures under one project (i.e. THP), and is not likely to result in a substantial number of additional project submittals. As such, no increase in agency staffing or significant increase in THP review is anticipated. Finally, even with the improved economic conditions for landowners, these will remain economically marginal projects, and in the long-term only a few new projects are expected each year that will require review under the THP process.

The proposed action will not result in the imposition of other non-discretionary costs or savings to local agencies.

The proposed action will not result in costs or savings in federal funding to the State.

HOUSING COSTS (pursuant to GOV § 11346.5(a)(12))

The proposed action will not significantly affect housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE (pursuant to GOV §§ 11346.3(a), 11346.5(a)(7) and 11346.5(a)(8))

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Businesses will be beneficially impacted by the proposed action.

Pursuant to **GOV §11346.5(a)(8)**, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support this initial determination:

- Testimony on additional project opportunities by the U.C. Extension Service in the Board's Forest Practice Committee meeting.
- The Board of Equalization Timber Yield Tax Tables

STATEMENTS OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT (EIA)

The results of the economic impact assessment are provided below pursuant to **GOV § 11346.5(a)(10)** and prepared pursuant to **GOV § 11346.3(b)(1)(A)-(D)**. The proposed action:

- (A) will create jobs within California;
- (A) will not eliminate jobs within California;
- (B) will create new businesses;
- (B) will not eliminate existing businesses within California;
- (C) will beneficially affect the expansion of businesses currently doing business within California.
- (D) will have nonmonetary benefits.

The types of businesses that will be impacted are industrial and nonindustrial forest landowners, forestry consulting, logging firms, restoration contractors, lumber mills, biogenic energy producers and shavings plants. Therefore, both large and small businesses may have positive economic impacts.

Businesses will be beneficially impacted by the proposed action. Currently, timber harvesting for the purpose of white and black oak conservation is not feasible under current regulations due to state stocking standards requiring stocking be met with Group A conifer species post-harvest (PRC § 4561). Therefore potential projects are not currently implemented and businesses potentially associated with these projects not employed. This proposal would allow all areas managed under this draft regulatory proposal to meet stocking standards with Group B species making these projects feasible and requiring professional employment and other business activity to implement.

This proposal may create 2-10 project opportunities per county with oak woodland stands in the Northern and Coast Forest Districts (14 counties), which could result in an

additional 10-50 THPs, THP amendments or NTMP amendments per year. Thus, new opportunities would be created for the types of businesses listed in this section. The project estimate is partially based on an estimate of potential new projects provided by the U.C. Extension Service.

The oak woodland projects made feasible by this proposal will have lower net return from timber values than the average fully stocked conifer stands. The harvest trees may have a wider spacing than typical harvest stands and therefore more equipment time will be required to remove the same board footage as fully stocked conifer stands. A high percentage of these potential projects will exist on land of lower site quality which means the volume per tree harvested may be smaller. There may also be a higher number of open grown trees on these projects. Open grown trees tend to have a greater number of large branches that produce in larger knots in lumber and thus results in a log with lower value. Together these factors will likely result in a significantly lower return per acre for the landowner than if the harvest occurred on a fully stocked conifer stand.

The economic potential from these projects will be quite variable. It is reasonable to expect a potential harvest of 2.5 to 7.5 thousand board feet (Mbf) per acre. Board of Equalization values for Douglas-fir range from \$100-350/Mbf. That provides a range of gross harvest value of \$250-2,625 per acre. If we assume a log and haul cost of \$175-300/Mbf, it is apparent that not all potential projects will provide a positive economic outcome.

A number of the projects conducted with this proposal will be accomplished with an economic "break-even" outcome. In these instances the landowner is driven to complete the project due to management objectives rather than economic incentive. Management objectives may include: 1) a desire to reduce the risk of large damaging fires, 2) maintenance of biological diversity, or 3) increase of wildlife benefits.

Given the many variables for starting and maintaining a business in California, and the limited scope of the proposed action, the number of businesses that may be created as a result of the proposed action is small. Existing businesses may have more work.

The primary benefit of this proposal is increasing the ability of the landowner to commercially manage oak woodlands for their biological diversity, wildlife, and water quality benefits.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS (pursuant to GOV § 11346.5(a)(9))

The Board is aware of cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This initial determination is based on the same record facts, evidence, documents, testimony, or other evidence as listed as the basis for the Significant Statewide Adverse Economic Impact.

The proposed action provides the landowner a regulatory pathway to manage for oak (Group B) species by reducing the amount of Group A species and specifying certain Group B species be used to meet post-harvest requirement to meet the stocking standards as allowed for in PRC § 4561.2 . The requirements for the submission and approval of the Timber Harvesting Plan (PRC § 4581), a Timber Operations Completion Report (PRC § 4585) and Stocking Report (PRC § 4587) will still apply. Thus the proposal cost impacts for these requirements are neutral.]

BUSINESS REPORT (pursuant to GOV §§ 11346.5(a)(11) and 11346.3(d))

The proposed action does not impose a business reporting requirement.

SMALL BUSINESS (pursuant to 1 CCR 4(a) and (b))

Small business, within the meaning of GOV § 11342.61, is expected to be effected by the proposed action. The types of small businesses that will be beneficially impacted by the proposed action are industrial and nonindustrial forest landowners, forestry consulting, logging, tree removal, landscapers, lumber mills, biogenic energy producers and shavings plants.

Small business:

- (1) Is legally required to comply with the regulation to the extent that a representative private person hires a small business for implementation;
- (2) Is not legally required to enforce the regulation;
- (3) Does derive a benefit from the enforcement of the regulation by being hired for implementation;
- (4) May incur a detriment from the enforcement of the regulation if they do not comply with the regulation.

ALTERNATIVES INFORMATION

In accordance with **GOV § 11346.5(a)(13)**, the Board must determine that no reasonable alternative it considers, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attn: Matt Dias
Acting Executive Officer
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-8007

The designated backup person in the event Mr. Matt Dias is not available is Doug Wickizer for the Board of Forestry and Fire Protection. Mr. Wickizer may be contacted at the above address or by phone at (916) 653-8007.

AVAILABILITY STATEMENTS (pursuant to GOV § 11346.5(a)(16))

All of the following are available from the contact person:

1. Express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion.
2. Initial Statement of Reasons, which includes a statement of the specific purpose of each adoption, amendment, or repeal, the problem the Board is addressing, and the rationale for the determination by the Board that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed.
3. The information upon which the proposed action is based (pursuant to **GOV § 11346.5(b)** and **GOV § 11346.2(a)**).
4. Changed or modified text. After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who testified at the hearings, submitted comments during the public comment period, including written and oral comments received at the public hearing, or requested notification of the availability of such changes from the Board of Forestry and Fire Protection. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

FINAL STATEMENT OF REASONS

When the Final Statement of Reasons (FSOR) has been prepared, the FSOR will be available from the contact person on request.

INTERNET ACCESS

All of the material referenced in the Availability Statements is also available on the Board web site at:

http://bofdata.fire.ca.gov/regulations/proposed_rule_packages/